

State of Hawaii
Department of Land and Natural Resources

Division of Aquatic Resources

October 13, 2006

Board of Land and
Natural Resources
State of Hawaii

REQUEST FOR FINAL APPROVAL TO AMEND
HAWAII ADMINISTRATIVE RULES,
CHAPTER 13-64, KOKEE PUBLIC FISHING AREA, KAUAI

Submitted for your consideration and approval is the final draft of the proposed amendments to Chapter 13-64, Kokee Public Fishing Area, Kauai. The proposed amendments would give the Department the flexibility to adjust the open season for fishing for rainbow trout, declare a daily bag limit based on the viability of the trout population, and adjust the fishing day period that is suitable for the time of year in which the fishing season is declared. Additional non-substantive proposed changes have been made to add clarity to the rule's language. It is anticipated that giving the Department the flexibility to adjust the open fishing season, bag limit, and duration of the fishing day will result in more and better opportunities for the public to fish for rainbow trout.

As an example, the public school system recently converted to a statewide schedule that has the summer break beginning in June and ending in July 2006. The open season in the existing rule commences in mid-August. If the rule remains as is, school children could not participate (except on weekends and holidays) in this popular recreational pastime.

A public hearing on the proposed rule amendments was held at the Lihue State Office Building, Lihue, Hawaii on July 6, 2006. The hearing's minutes are attached. Five people attended the hearing. Three people testified. All of the testimony was in support of all proposed amendments.

Additionally, written testimony was submitted by six people after the public hearing. All these testimonies supported all of the proposed rule amendments.

This proposal has the support of the Kauai Aquatic Life and Wildlife Advisory Committee.

RECOMMENDATION:

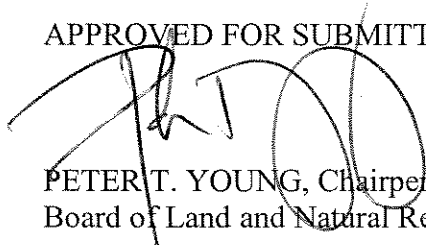
That the Board approve the proposed amendments to Hawaii Administrative Rules
Chapter 13-64, Kokee Public Fishing Area, Kauai.

Respectfully submitted,



DAN A. POLHEMUS, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

Attached: Minutes of the public hearing
Chapters 13-64 (Ramseyer Draft 2/15/06)

Minutes of the Public Hearing
Amending Hawaii Administrative Rules
Chapter 13-64, Kokee Public Fishing Area, Kauai

State Office Building, 3060 Eiwa Street, Lihue, Kauai
July 6, 2006

I. Introduction

A. Opening

1. It is now 6:08 P.M. and this Public Hearing is called to order.
2. This is a formal Public Hearing on the Administrative Rules of the Department of Land and Natural Resources.
3. My name is Francis Oishi, and I am a program manager with the Division of Aquatic Resources; I will conduct this public hearing.

B. Purpose

4. The purpose of this hearing is so that the Department can receive public testimony on proposed changes to administrative rules for the Kokee public fishing area. It is to afford any interested person opportunity to submit data, views, or arguments on these proposed changes.

For Chapter 13-64, these rule changes would give the Department the flexibility to adjust the open season for fishing for rainbow trout, declare a daily bag limit based on the viability of the trout population, and to adjust the fishing day period that is suitable for the time of year. There are also additional changes to add clarity to the rule language.

5. I hope that all of you have signed in. If not, please do so, so that we may have a complete record of all persons attending this hearing.
6. There is also a separate sheet to sign for those wishing to present testimony on the proposed rule changes.
7. When it is time to testify, I will call the names in the order that they are listed on the sign-in sheet.

C. Present staff and others

At this time, I would like to introduce members of Division of Aquatic Resources staff:
Wade Ishikawa, Information Specialist
Mark Sueyasu, Fisheries Technician.

II. Background

- A. These proposed rule changes have been discussed and are supported by the Kauai Aquatic Life and Wildlife Advisory Committee.

- B. Approvals to conduct this public hearing have been obtained from the Board of Land and Natural Resources (11/18/05) and Governor Lingle (5/2/06).
- C. Copies of the administrative rules are available for inspection at the table near the entrance. During this hearing we want to obtain your testimonies on these proposed changes.

III. Notice of public hearing

Notices of this public hearing were placed in the May 28, 2006 issues of the Honolulu Star-Bulletin and the Garden Island.

IV. Hearing procedures

This hearing will be conducted as follows:

- 1. I will explain the proposed changes to the administrative rules.
- 2. Then I will call on those who have signed up to testify as they are listed on the sign in sheet.
- 3. Please keep your testimony brief and on the subject in order to allow all those who came tonight the opportunity to testify.
- 4. After those who signed up have presented their testimony, I will ask if anyone else wishes to testify.
- 5. We are tape recording this hearing so that we have a complete transcript of the hearing, so please state your name for the record.
- 6. Please remember to respect the opinions of all testifiers, that this hearing is not an opportunity for accusations or rebuttals. This won't be allowed. There will be differing opinions, and we respect that. Everyone has an opportunity to voice their opinions so that they may be considered.
- 7. If you have a question, please direct it to me, and I will find the most appropriate person to answer.

V. Rule Explanation

The attendees indicated they did not need to have the rule explained.

VI. Testimonies

- A. As I call your name, please come to the microphone, and state your name.

Lynn McCrory: I would like to stand with strong support on my written testimony that I've sent in. I think it's a very important change that allows great flexibility. Thank you for all the work that you've done.

Oishi: Thank you for your testimony. Is there anyone else wishing to present testimony?

Glenn Ikemoto: My name is Glenn Ikemoto. I also would like to support the changes to the rules as written here. I'd like to make two comments or perhaps two additions to the rules. I would like to see perhaps some requirement where, as in the past years, fishermen who are actively fishing have their fishing license somewhere prominently displayed. It needs to be that practice, but I don't know what happened to it. It's easier for enforcement so that people can know who's licensed and who is not. Right now there is no requirement that the license be displayed but should be re-instated.

The second one I'd like to see added to the rules is something about if you've caught your limit for the day, you cannot continue fishing. You must put your pole down. There are some people that continue to catch-and-release the fish which I don't think does the fish any good. It also takes away from other people the opportunity to catch the fish. That's all I have to say. Thank you for your consideration.

Oishi: Thank you. Is there anyone else wishing to testify?

Wayne Tanji: For the record my name is Wayne Tanji. I support this new rule change, and I commend the committee for recommending it because I believe the people on-site should be the ones making the judgment when to open and close the fishing seasons. I understand the changes could be anytime. For example, low water conditions so the new season can begin. I really think that's a good idea. Thank you.

Oishi: Thank you. Is there anyone else wishing to testify? Excuse me sir, did you want to testify?

Unknown speaker: No.

Oishi: We're almost at the end of the hearing. I'm sorry you've missed the beginning but we're in the process of accepting testimonies so if you'd like to testify at this time, we'd be happy to accept your testimony on the proposed changes.

Unknown speaker: No.

B. Late testimonies: Persons unable to attend tonight or wishing to present additional comment, may mail written testimony to us by July 21, 2006.

Please mail testimonies to:
Department of Land and Natural Resources
1151 Punchbowl Street, Rm 330
Honolulu, HI 96813

VII. Decision-making on the proposals:

- A. Based on the testimonies presented, the Department will submit its findings and recommendations to the Board of Land and Natural Resources.
- B. If adopted by the Board, legal review will be done by the Attorney General, and then if approved, will be sent to the Governor for her final approval.
- C. Should the Governor grant approval, certified copies will be filed with the Lt. Governor's office, and after 10 days, it will be in effect.

VIII. Adjournment

- A. On behalf of the Board of Land and Natural Resources and Division of Aquatic Resources, thank you for attending this public hearing. This public hearing is now adjourned.
Time: 6:15 P.M.
- B. Drive home carefully.

Rules Amending Title 13
Hawaii Administrative Rules

(Date)

1. Chapter 64 of Title 13, Hawaii Administrative Rules, entitled "Kokee Public Fishing Area, Kauai" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART III FRESHWATER FISHERIES MANAGEMENT AREAS

CHAPTER 64

KOKEE PUBLIC FISHING AREA, KAUAI

§13-64-1	Intent and Purpose
§13-64-1.2	Definitions
§13-64-2	Prohibited activities
§13-64-3	Permitted activities
§13-64-4	Open fishing season
§13-64-5	Fishing reports
§13-64-6	Penalty
§13-64-7	Severability

Historical Note: Chapter 64 of Title 13 is based substantially upon Regulation 39 of the Division of Fish and Game, Department of Land and Natural Resources, State of Hawaii. [Eff. 7/25/74; R 5/26/81]

§13-64-1 [Boundary. The Kokee public fishing area shall include the Kokee, Kauaikinana, Kawaikoi, Waiakoali, Mohihi, Poomau, Koaie and Waialae streams, Puu Lua reservoir, and Kokee ditch system except as prohibited in §13-64-2, and as delineated in "Map of the Kokee Public Public Fishing Area, Kauai 3/27/81," attached at the end of this chapter.] Intent and purpose. The intent and purpose of this chapter is to:

- 1) Provide the residents and visitors of Kauai a quality experience to recreationally fish for rainbow trout; and
- 2) Allow the department to adjust the open fishing season annually for the maximum benefit to the fishing public. [Eff: 5/26/81; comp 8/14/89; am and comp] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-64-1.2 Definitions. As used in this chapter:

"Department" means Department of Land and Natural Resources.

"Fish," "fish for," "fishing" means to take, catch, capture, confine, or harvest, or to attempt to take, catch, capture, confine, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to take, catch, capture, confine, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life may be taken, caught, captured, confined, or harvested, shall be construed as fishing.

"Freshwater game fishing license" means the license issued by the department pursuant to section 13-74-10.

"Kokee public fishing area" means the area that includes the Kokee, Kauaikinana, Kawaikoi, Waiakoali, Mohihi, Poomau, Koaie and Waialae streams, Puu Lua irrigation reservoir, and Kokee ditch irrigation system, except as prohibited in section 13-64-2, and as delineated in Exhibit 1, entitled "Map of the Kokee Public Fishing Area, Kauai 3/27/81," attached at the end of this chapter and incorporated by reference.

"Treble hook" means a hook comprised of three wire lengths that end in points, with or without barbs.

"Trotlines" means a type of fishing gear consisting of a mainline with branch lines with baited hooks attached. The main line may be weighted or anchored on one end and the other end fixed to an object on the shore. The main line may also have floats to adjust the height of the lines in the water column. [Eff and comp] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-64-2 Prohibited activities. [No person shall] It is unlawful for any person to engage in the following activities within the Kokee public fishing area:

- (1) Fish for, catch, take, possess, or remove any rainbow trout except as provided in [§13-64-3] section 13-64-3;
- (2) Use any form of corn for bait;
- (3) Use treble hooks or more than one hook;
- [(3)](4) Enter into or fish in that portion of Kokee stream including all tributaries above Camp Sloggett, which is declared as a prohibited fishing zone;
- [(4)](5) Enter into or fish in any other area posted as a prohibited fishing zone;
- [(5)](6) Damage or mutilate any public or private property including trees and shrubs, fencelines, gates, buildings, waterlines, and pumps;
- [(6)](7) Contaminate or pollute any stream, ditch, spring, water hole, or reservoir;
- [(7)](8) Possess any spears, chemicals, trotlines, nets other than as provided in [§13-64-3] section 13-64-3, or [other] illegal fishing gear;
- [(8)](9) Operate any vehicle in any fishing area except on roads constructed for and open to vehicular use; or
- [(9)](10) Utilize any aircraft to gain access for fishing purposes. [Eff: 5/26/81; am and comp 8/14/89; am and comp] (Auth: HRS§188-53) (Imp: HRS §188-53)

§13-64-3 Permitted activities. [A person may, with a valid State of Hawaii freshwater game fishing license, fish with one pole and line or one line using one lure or one baited hook attached to the single line, catch, take, possess, or remove any rainbow trout, provided that:

- (1) The open season for trout fishing shall begin on the first Saturday of the month of August for a period of sixteen consecutive days, and thereafter for the remainder of August and through September, only during the weekends and State holidays unless the open season had been suspended by the chairman of the board when such action is necessary for the protection and conservation of the trout resource;
- (2) The bag limit shall be seven trout for each licensee per fishing day, provided that any person may possess additional legally taken trout under refrigeration;
- (3) Fishing be conducted between 5:30 a.m. and 6:45 p.m. on each fishing day;
- (4) Use a dip net not exceeding two feet (0.61 meters) along the longest axis, excluding the handle, to land hooked trout; and
- (5) All fishermen be required to report before and after their fishing activities as follows:
 - (A) For the Kokee ditch system, Puu Lua reservoir and those using the camp ten or Halemanu roads for access, to sign in and sign out at the Kokee park headquarters or Kokee hunter checking station on a daily basis, provided that those camping in the back country must indicate such intention when signing in and signing out upon return;
 - (B) For those utilizing the Kukui trail for access, to sign in and sign out at the trailhead before entering and upon return; or
 - (C) For all others utilizing other access routes, to telephone the Department's

Kauai district office in Lihue with information relative to:

- (i) Description of access route;
- (ii) Expected date and time of entry;
- (iii) Expected date and time of return;
- and
- (iv) Number of trout caught upon return.]

(a) The Department may issue permits to engage in activities prohibited by this chapter, as provided in section 187A-6, HRS, or other law.

(b) During an open fishing season as provided in section 13-64-4, a person may fish for, possess, or remove rainbow trout or any aquatic life from the Kokee public fishing area, subject to the following conditions:

- (1) The person shall possess a valid freshwater game fishing license as required by section 13-74-10 and HRS section 188-50;
- (2) The person shall use only one pole and line, or one line with one lure or one baited hook attached to one line;
- (3) The person shall possess not more than a maximum number of trout daily as determined by the department for that open fishing season, subject to HRS section 188-50(d);
- (4) The person must allow inspection of any bag or container of any kind used to carry aquatic life, or any vehicle or any conveyance used to transport aquatic life;
- (5) The person shall fish only during a daily time period as determined by the department for that open fishing season;
- (6) The person shall use a dip net not more than two feet ((0.61 meters) along the longest axis, excluding the handle, to land hooked trout; and
- (7) The person shall fill out a report before and after each fishing activity as provided in section 13-64-5. [Eff 5/26/81; am and

comp 8/14/89; am and comp] (Auth: HRS §§187A-6, 188-50, 188-53)(Imp: HRS §§187A-6, 188-50, 188-53)

[§13-64-4 Penalty. A person violating the provisions of this chapter shall be guilty of a petty misdemeanor; and upon conviction thereof, shall be punished as provided by law.] [Eff 5/26/81; comp 8/14/89] (Auth: HRS §§188-50, 188-53) (Imp: HRS §§188-50, 188-53)

§13-64-4 Open fishing season. (a) The department shall announce annually on January 1 or soon thereafter, the period or periods during which the public can fish for rainbow trout.

(b) The department shall determine the total number of days open to fishing for the year, provided that the department may modify the open season and announce the modification when it recognizes conditions that support a lengthening or shortening of the open fishing season.

(c) Every effort will be made by the department to provide fishing opportunity, provided that should any work be required as part of maintenance of the irrigation system, this work may preclude fishing in some or all of that system. [Eff and comp

] (Auth: HRS §188-53) (Imp: HRS §188-53)

§13-64-5 Fishing reports. (a) All persons are required to report their fishing activities in the Kokee public fishing area as follows:

- (1) Those persons fishing the Kokee ditch system, Puu Lua reservoir, or those accessing the area through the camp ten or Halemanu roads, must sign in and sign out at the Puu Lua reservoir, Kokee park headquarters or Kokee hunter check-in station.
- (2) Those persons accessing the area through the Kukui trail, must sign in before entering and sign out upon returning to, the trailhead; or
- (3) Those persons using any other access route into the area, must telephone the department's Kauai district office in Lihue and provide the following information:

- (A) Description of access route;
- (B) Expected date and time of entry;
- (C) Expected date and time of return; and
- (D) Number of trout caught upon return.

(b) All persons are required to report their fishing activities daily, except those persons fishing while camping overnight or longer are required to report upon entering and leaving.

(c) The reports shall be on forms provided by the department and shall require date and time of entry, fishing locations, number of rainbow trout caught, fishing effort, date and time of return, freshwater game fish license number, and any other fishing related information the department may deem necessary. [Eff and comp] (Auth: HRS §188-53) (Imp: HRS §§188-50, 188-53)

§13-64-6 Penalty. Any person violating the provisions of this chapter shall be guilty of a petty misdemeanor, be subject to administrative penalties, and punished as provided by law. [Eff 5/26/81; comp 8/14/89; am and comp] (Auth: HRS §§187A-12.5, 188-53, 188-70) (Imp: HRS §§187A-12.5, 188-70)

§13-64-7 Severability. If any provisions of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff and comp] (Auth: HRS §§1-23, 188-53) (Imp: HRS §§1-23, 188-53)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

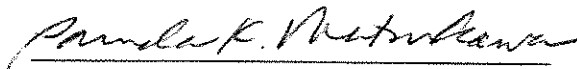
3. Additions to update source notes to reflect these amendments are not underscored.

4. These amendments to and compilation of chapter 13-64, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

PETER T. YOUNG, Chairperson
Board of Land and Natural
Resources

APPROVED AS TO FORM:



PAMELA MATSUKAWA
Deputy Attorney General

